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January 19, 1995

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JAN 19 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

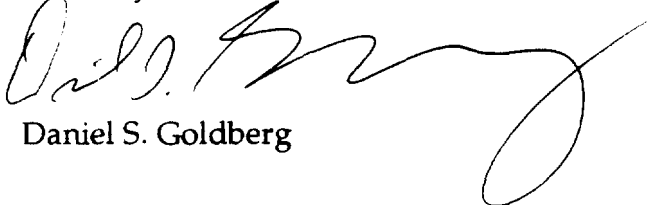
Re: PR Docket No. 89-553, 93-144 and GN Docket No. 93-252
Ex Parte Presentation

Dear Mr. Caton:

Please be advised that RAM Mobile Data USA Limited Partnership sent the attached materials today to Peter A. Tenhula, with copies to Daniel B. Phythyon, David Furth and Amy Zoslov. Two copies of said materials are hereby submitted for the public record in this proceeding pursuant to 47 C.F.R. § 1.1206(a)(1).

If there are any questions in this regard, please contact the undersigned.

Sincerely,



Daniel S. Goldberg

Attachments

cc: Peter A. Tenhula
Daniel B. Phythyon
David Furth
Amy Zoslov

**Proposed Language for Inclusion in FCC Order
Adopting Final Technical Rules for 900 MHz SMRs**

We note that Rand McNally & Company ("Rand McNally") is the copyright owner of the MTA Listings, which list the counties contained in each MTA, as embodied in Rand McNally's Trading Area System MTA Diskette, and geographically represented in the map contained in Rand McNally's *Commercial Atlas & Marketing Guide* (the "MTA Map"). The conditional use of Rand McNally's copyrighted material by interested persons is authorized under a blanket license agreement dated January __, 1995, between Rand McNally and the American Mobile Telecommunications Association ("AMTA"). This agreement covers the 900 MHz SMR service and requires authorized users of the material to include a legend on reproductions (as specified in the license agreement) indicating Rand McNally's ownership. Grantees of 900 MHz SMR ten-channel block MTA licenses can obtain a license to use Rand McNally's copyrighted material pursuant to the Rand McNally/AMTA license agreement upon payment to Rand McNally of \$125.00 per each ten-channel block MTA license a grantee obtains.

The MTA Listings, the MTA Map and the Rand McNally/AMTA license agreement are available for public inspection at the Wireless Telecommunications Bureau's public reference room, Room __, 2025 M Street, N.W., Washington, D.C. 20554. Copies of the foregoing can also be obtained by contacting Kim McLean, Marketing Coordinator, Rand McNally & Company, 8255 North Central Park, Skokie, Illinois 60076 (telephone: (800) 333-0134), or the American Mobile Telecommunications Association, 1150 18th Street, N.W., Suite 250, Washington, D.C. 20036 (telephone: (202) 331-7773).

Grantees who do not wish to take part in the Rand McNally/AMTA license agreement are free to negotiate their own licensing arrangement with Rand McNally. In any event, it is important to emphasize that a 900 MHz SMR MTA license grantee who does not obtain a copyright license (either through the Rand McNally/AMTA license agreement or some other arrangement with Rand McNally) from Rand McNally for use of the copyrighted material may not rely on grant of an MTA-based SMR license from the Commission as a defense to any claim of copyright infringement brought by Rand McNally against such grantee.

DRAFT--1/19/95

LICENSE AGREEMENT

THIS LICENSE AGREEMENT made as of the ____ day of January, 1995, by and between Rand McNally & Company, 8255 North Central Park, Skokie, Illinois 60076 ("RMC") and the American Mobile Telecommunications Association, 1150 18th Street, N.W., Suite 250, Washington, D.C. 20036 ("AMTA").

1. DEFINITIONS

- a. "Agreement" shall mean this License Agreement.
- b. "Licensed Material" shall mean the MTA listings contained in Attachment I hereto and the MTA Map.
- c. "MTA Map" shall mean the map contained on pages 38-39 of the 1992 version of RMC's Commercial Atlas & Marketing Guide, which graphically depicts the MTA listings contained in Attachment I hereto.
- d. "License" shall mean the license described in Section 2 hereof.

2. LICENSE

a. Subject to the terms and conditions of this Agreement, including without limitation Section 4 hereof RMC irrevocably grants to AMTA, and all other interested persons (collectively referred to as "Licensees") a nonexclusive license to reproduce, create derivative works from, publicly distribute and publicly display the Licensed Material and derivative works created therefrom, provided however that such rights may be exercised solely for the purposes set forth in Attachment II hereto. Notwithstanding the foregoing, initial 900 MHz specialized mobile radio ("SMR") service MTA licensees ("MTA Licensees") may remain Licensees hereunder only upon payment to RMC of the requisite License Fee, as defined in Section 3 hereof. If an MTA Licensee fails to pay the requisite License Fee within the time period set forth in Section 3(b) hereof, the License granted hereunder to such MTA Licensee shall be null and void *ab initio* until such payment is received.

- b. As a condition of the License, Licensees shall include:

(i) on any reproduction of all or any substantial portion of the Licensed Material the following legend:

Copyright © 1992 Rand McNally & Company. Rights granted pursuant to a license from Rand McNally & Company (through an arrangement with the American Mobile Telecommunications Association) to all interested parties for use solely in connection with the licensing, building, marketing and operation of 900 MHz specialized mobile radio services.

(ii) on any reproduction of all or any substantial portion of any derivative work based on the MTA listings or the MTA Map (including but not limited to any official Federal Communications Commission (the "Commission") version of geographic boundaries based on such listings), the following legend:

Based on Material Copyrighted © 1992 by Rand McNally & Company. Rights granted pursuant to a license from Rand McNally & Company (through an arrangement with the American Mobile Telecommunications Association) to all interested parties for use solely in connection with the licensing, building, marketing and operation of 900 MHz specialized mobile radio services.

For purposes of this subparagraph 2(b), a reference to twenty-five (25) or less of the MTA listings in the Licensed Material shall not constitute a "substantial portion" of the Licensed Material or of any derivative work based thereon.

c. Subject to the rights granted the Licensees hereunder, the Licensed Material and all copyright and other proprietary rights therein are and remain the property of RMC.

3. PAYMENT TO RMC

a. As consideration to RMC, each MTA Licensee seeking to become a Licensee hereunder shall make a one-time payment to RMC in the amount of \$125.00 per each 900 MHz SMR MTA ten-channel block license of which said MTA Licensee is the grantee (the "License Fee"). By way of example, if an MTA Licensee is the grantee of four (4) 900 MHz SMR MTA ten-channel block licenses, the requisite License Fee hereunder would be \$500.00. Once a License Fee has been paid for a given ten-channel block in a given MTA, no further License Fee shall be required from any

future entity that becomes the licensee of any or all of the channels within such ten-channel-block in such MTA.

b. License Fee(s) shall be made in U.S. funds by wire transfer or in the form of a certified bank check payable to Rand McNally & Company which shall be transferred or delivered to RMC within 30 business days after the date that an MTA Licensee's 900 MHz SMR MTA license(s) is issued by the Commission.

c. Upon receipt of the License Fee from an MTA Licensee, RMC shall include in Attachment IV, hereto, the MTA(s) and ten-channel block(s) covered by such MTA Licensee's License Fee.

3A. DEPOSIT

Within ten (10) days of the execution of this License Agreement, AMTA shall make a good faith deposit with RMC of \$12,500.00 (the "Deposit"). The first \$12,500.00 of License Fees that RMC collects hereunder shall be used to reimburse AMTA for the Deposit (the "Deposit Reimbursement"). The Deposit Reimbursement shall be made in U.S. funds by wire transfer or in the form of a certified bank check payable to the American Mobile Telecommunications Association, which shall be transferred or delivered to AMTA within 10 business days after the date that RMC collects the first of \$12,500.00 of License Fees.

4. TERM AND TERMINATION

a. The License granted hereunder shall extend for the entire term of copyright in the Licensed Material, subject to earlier termination as provided herein.

b. RMC may terminate the License as against any particular Licensee for a material breach by such Licensee of the terms of the License described herein, if such breach is not cured within 30 days after such Licensee receives notice of the breach. This right of termination is in addition to, and not in lieu of, any other remedies RMC may have for breach of this Agreement. It is understood and agreed that AMTA and the Licensees shall have no obligations hereunder to enforce the terms of this Agreement against persons or entities not a party hereto or as between themselves, and, furthermore, any breach of the terms of the License by a Licensee other than AMTA shall not be deemed a breach of this Agreement by AMTA or the non-breaching Licensees nor shall it impair AMTA's rights or the non-breaching Licensees' rights hereunder. Notwithstanding the foregoing, to the extent AMTA's or

a Licensee's willful conduct in violation of this Agreement causes or results in a breach of the License by another Licensee, such willful conduct shall constitute a breach of the License by AMTA or the Licensee that causes another Licensee to breach, as applicable.

c. This Agreement and the License granted hereunder shall terminate and be of no further force and effect if, at any time prior to the initial wide-area licensing of 900 MHz SMR licenses, the Commission elects to use geographic boundaries for such auction that are not based on the Licensed Material, provided that AMTA so notifies RMC within 60 days after the Commission's decision. Within 10 business days after receiving such notification, RMC will refund the Deposit to AMTA.

5. OBLIGATIONS OF RMC

a. Upon execution of this Agreement, RMC shall provide to AMTA:

(1) The 1993 version of RMC's Trading Area System MTA Diskette, which is an electronic version of the MTA listings contained in Attachment I hereto, and (ii) three (3) copies of each of the MTA listings comprising Attachment I hereto and the MTA Map.

b. Upon execution of this Agreement, RMC shall provide to the Commission two copies of the Licensed Material in hard copy form for use by Licensees in accordance with the terms and conditions of this Agreement.

c. For a period of three (3) months after the date hereof, RMC shall, upon request therefor, make available to individual Licensees additional copies of the Licensed Material (excluding the MTA Map), which shall include the alterations and enhancements made by the Commission that are summarized in the Second Report and Order, GEN Docket No. 90-314, 8 FCC Rcd 7700 (1993), in hard copy and electronic form, at the fees summarized in Attachment III hereto. RMC shall have no obligation to (i) make any other alterations or enhancements to the Licensed Material that may be made by the Commission or any other Licensee, or (ii) include any alterations or enhancements whatsoever in any version of its Commercial Atlas & Marketing Guide.

6. RESERVATION OF RIGHTS BY RMC

a. RMC reserves its right to alter the Licensed Material or any part thereof in the future. Any modifications to the Licensed Material shall not be included in the Licensed Material under this Agreement, unless the parties agree otherwise in a signed writing.

b. RMC reserves all rights with respect to the Licensed Material not expressly granted herein, including but not limited to rights in respect of use of the Licensed Material or any part thereof for purposes other than those described on Attachment II hereto. The purposes for which the Licensed Material may be used may be expanded (*e.g.*, to provide for use in connection with future Commission proceedings) solely with the prior written authorization of RMC and upon payment of additional compensation to RMC by an appropriate party, in an amount to be negotiated with such party.

7. REPRESENTATIONS AND WARRANTIES OF RMC

a. RMC represents and warrants that (i) it is the owner of the Licensed Material and any and all copyright rights therein, (ii) it has all rights necessary to enter into this Agreement and to grant the License granted herein, and (iii) the Licensed Material constitutes "work made for hire," as such term is defined under the Copyright Act of 1976, as amended.

b. RMC shall indemnify and hold harmless AMTA and each Licensee, as applicable, from and against any losses, damages, liabilities, actions, judgments, settlements, costs and expenses (including reasonable attorneys' fees) arising from any assertion against AMTA or a Licensee that the Licensed Material used within the scope of this Agreement infringes or violates any rights of any third party, provided that: (i) AMTA or the Licensee, as applicable, promptly notifies RMC of any such assertion; (ii) RMC has sole control over the defense of such claim, including any related settlement negotiations; and (iii) AMTA or the Licensee, as applicable, cooperates with RMC in the defense of such claim (at no cost to AMTA or the Licensee). This indemnity shall not apply to any modification or adaptation of the Licensed Material if use of the Licensed Material alone would not be infringing.

8. GENERAL

a. Waiver. The failure or delay by any party to enforce any term of this Agreement shall not be deemed a waiver of such term or of the right to enforce such term in the future. No waiver shall be binding unless in a writing signed by the party making the waiver. RMC's waiver of breach by one Licensee shall not be deemed a waiver of breach by another Licensee.

b. Complete Agreement. This Agreement, including the Attachments hereto, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous communications, representations, understandings or agreements between the parties with respect to the subject matter hereof. It may be modified only in a writing signed by the parties.

c. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the other provisions of this Agreement shall continue in full force and effect notwithstanding such holding.

d. Notices. Notices relating to this Agreement shall be in writing and sent by reliable air courier service, or by registered or certified mail addressed to the parties at the addresses set forth above. Any notice to RMC shall be sent to the attention of Deborah Lipoff, Esq. Any notice to AMTA shall be sent to the attention of Alan R. Shark (with a copy, which shall not constitute notice, to Elizabeth R. Sachs, Esq., Lukas, McGowan, Nace & Gutierrez, 1111 Nineteenth Street, N.W., Suite 1200, Washington, D.C. 20036). The address to which any notice may be given may be changed upon written notice as provided above.

e. CONTROLLING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED UNDER THE SUBSTANTIVE LAWS OF THE STATE OF ILLINOIS, AS APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN ILLINOIS.

f. Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed an original and both of which together shall constitute one and the same instrument.

g. Publicity. The parties hereto agree to issue a mutually acceptable press release regarding this Agreement or the License granted hereunder.

h. Successors. This Agreement shall be binding on and shall inure to the benefit of any successors or assigns of the parties, provided that no assignment of this Agreement shall relieve either party of its obligations to the other party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective authorized representatives.

RAND MCNALLY & COMPANY:

By: _____
(Signature)

NAME: _____
TITLE: _____

THE AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION

By: _____
(Signature)

NAME: Alan R. Shark
TITLE: President and CEO

ATTACHMENT I

MTA Listings

ATTACHMENT II

Statement of Purposes For Which the Licensed Material May be Used

The Licensed Material may be used:

(i) In any documents prepared in connection with 900 MHz specialized mobile radio services proceedings completed or pending before the Commission as of the date of this Agreement that rely on or refer to the Licensed Material or any successor proceedings.

(ii) In any documents or other materials prepared in connection with the licensing, building, marketing and operation of 900 MHz specialized mobile radio services.

ATTACHMENT III

Schedule of Fees for Additional Copies of Printed Listings

Print Listing of Licensed Materials	\$25/copy
MTA Diskette	\$25 for first copy; \$5 for each additional copy*

* Additional charge for Federal Express.

ATTACHMENT IV

MTA(s) and Ten-Channel Block(s) For Which License Fees Have Been Fully Paid